

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:10-CT-3091-BO

KAMAL PATEL,)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
HEE HAW TUCKER-HILL, et al.,)	
Defendants.)	

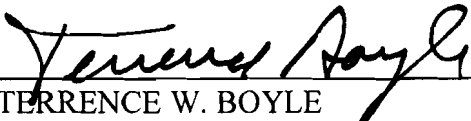
On June 7, 2010, plaintiff filed a civil rights action pursuant to Bivens v. Six Unknown
Nmaed Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). On December 20, 2010, the
undersigned allowed the matter to proceed after a frivolity review. 28 U.S.C. § 1915. On May
11, 2010, a motion to dismiss, or in the alternative, a motion for summary judgment was filed by
defendants (D.E. # 14). Plaintiff was notified of the motion on or about May 12, 2011, and given
until June 27, 2011, to file his response. On June 9, 2011, plaintiff filed a motion for voluntary
dismissal without prejudice (D.E. # 30). No response to the motion for voluntary dismissal was
filed by defendants, and the matter is ripe for determination.

An action may be dismissed voluntarily by a plaintiff without order of the court by filing
a notice of dismissal at any time before service by the adverse party of an answer or a motion for
summary judgment. See Fed. R. Civ. P. 41(a)(1). Otherwise, an action shall not be dismissed on
the plaintiff's request except upon order of the court. See Fed. R. Civ. P. 41(a)(2).

Rule 41(a)(2) permits voluntary dismissal "upon such terms and conditions that the court
deems proper." A motion under Rule 41(a)(2) should not be denied absent "legal" or
"substantial" prejudice to defendants. See Ellett Brothers, Inc. v. U.S. Fidelity and Guar. Co.,

275 F.3d 384, 388 (4th Cir. 2001); Ohlander v. Larson, 114 F.3d 1531, 1537 (10th Cir. 1997); Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986). Defendants did not respond to the motion. Obviously, without response, there can be no showing of any prejudice, much less a substantial or legal showing of prejudice to defendants.

Therefore, plaintiff's Motion for Voluntary Dismissal without prejudice (D.E. # 30) is ALLOWED as to all defendants. All other pending motions (D.E. # 24) are DENIED as MOOT. The case is CLOSED. SO ORDERED, this the 20 day of July 2011.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE